TVA Terminals, Inc. *and* International Longshoremen's and Warehousemen's Union, Petitioner. Cases 21-CA-22068 and 21-RC-16932

30 April 1984

DECISION, ORDER, AND DIRECTION OF FOURTH ELECTION

BY MEMBERS ZIMMERMAN, HUNTER, AND DENNIS

On 27 October 1983 Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, TVA Terminals, Inc., Wilmington, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) Threatening employees with adverse economic consequences if the employees select International Longshoremen's and Warehousemen's Union to represent them."

2. Substitute the attached notice for that of the administrative law judge.

IT IS FURTHER ORDERED that the election held 4 March 1983 be set aside.

[Direction of Fourth Election omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate employees concerning their activities or sympathies for International Longshoremen's and Warehousemen's Union.

WE WILL NOT threaten you with adverse economic consequences if you select International Longshoremen's and Warehousemen's Union to represent you.

WE WILL NOT promise employees additional work or a written contract as a substitute for a collective-bargaining agreement if you reject International Longshoremen's and Warehousemen's Union as your representative in a representation election conducted under the National Labor Relations Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

TVA TERMINALS, INC.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. This matter was heard on June 21, 1983, at Los Angeles,

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In concluding that the Respondent's manager, Cowan, unlawfully interrogated employee Lazo concerning his voting preference in the forthcoming election, the judge remarked, "Entirely aside from the fact that it was not an isolated instance of coercive conduct, I am not satisfied that such an employer's inquiry as to how an employee intends to vote in a secret ballot representation election should ever be excused on that ground." We adopt the judge's conclusion that the Respondent's interrogation violated Sec. 8(a)(1) in the circumstances of this case, but find it unnecessary to pass upon the quoted remark.

[3] Par. 1(b) of the recommended Order requires the Respondent to cease and desist from threatening employees, inter alia, with conduct evidencing an unwillingness to reach a collective-bargaining agreement if the employees select the Union to represent them. We note that the complaint contains no allegation that the Respondent engaged in this conduct, and that the parties did not directly litigate this issue. Nevertheless, the judge found that Supervisor Cowan told the unit employees at a meeting on 3 March that if they voted for the Union he would negotiate strictly with the Union and not the employees. Because this statement is susceptible to an interpretation that the Respondent would negotiate *only* with the Union if it were voted in—a position consistent with the Respondent's bargaining obligations—we find that there is insufficient basis for concluding that Cowan's statement was unlawful. Accordingly, we shall delete from par. 1(b) of the recommended Order the requirement that the Respondent cease and desist from threatening employees with this conduct.

California.[1] The charge in Case 21–CA–22068 was filed against TVA Terminals, Inc. (Respondent) by the International Longshoremen's and Warehousemen's Union (Union) on March 16. A complaint based on that charge was issued on behalf of the General Counsel of the National Labor Relations Board (NLRB or Board) by the Regional Director for Region 21 of the Board on April 28 alleging that the Respondent had violated Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer dated May 2. On May 26, the Acting Regional Director for Region 21 issued a supplemental report on objections (supplemental report) in Case 21–RC–16932, involving the same parties, in which it was concluded that, as the factual issues raised by certain of the Union's election objections were closely related to the issues raised by the complaint case, it was appropriate to consolidate the two cases for hearing and decision and an order to that effect issued simultaneously.

On the entire record, including my observation of the witnesses who testified at the hearing, and my careful consideration of the posthearing briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a California corporation, receives, stores, and ships baled cotton at its Wilmington, California place of business. The Respondent annually purchases and receives goods valued in excess of $50,000 directly from suppliers located outside California in its normal business operations. The Respondent has been at relevant times an employer within the meaning of Section 2(2) of the Act, engaged in commerce, or a business affecting commerce, within the meaning of Section 2(6) and (7) of the Act. On the basis of the foregoing, I find that the Respondent meets the Board's applicable nonretail, direct inflow standard and that it would effectuate the purposes of the Act for the Board to exercise its jurisdiction in connection with the labor dispute involved here.

II. LABOR ORGANIZATION

The Union has been a labor organization within the meaning of Section 2(5) of the Act at relevant times.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Pleadings*

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act by the conduct of its general manager Wynn A. Cowan Jr. (Cowan). It alleges that Cowan unlawfully interrogated employees on an unknown date in February, and again about March 3; that he threatened employees with the loss of work and business and other reprisals about March 2 or 3; that he promised the employees there would be increased work and earnings, and that he would negotiate an agreement directly with them if they did not select the Union as their collective-bargaining representative; and that he told employees in January or February that they did not receive wage increases because they gave affidavits in a prior Board proceeding. The Respondent's answer denies the alleged unfair labor practices. No affirmative defenses are alleged.

The Acting Regional Director's report in Case 21–CA–16932 discloses that a third representation election was conducted in that case on March 4.[2] The official tally of ballots served after the March 4 election reflects that seven ballots were cast against representation by the Union, three ballots were cast for representation, and one ballot was void. On March 14, the Union filed timely objections to conduct affecting the results of the March 4 election.[3] Included in the Union's objections to the third election were allegations that the Respondent had interrogated employees concerning their union activities and sympathies, and had threatened employees with the loss of work. The Acting Regional Director concluded that these objections were closely related to the complaint allegations and ordered the cases consolidated. The evidence offered in connection with the complaint allegations is the only evidence offered to support the objections.

B. *Background Information*

As noted, the Respondent's business is the receiving, storing, and shipping of baled cotton. Approximately 26 shippers use the Respondent's services. Generally speaking, the Respondent's operations are seasonal. The peak period lasts from October through February or March.

The Respondent's two main facilities are located in Wilmington, California, and are known as warehouse no. 16 and no. 17. These warehouses are divided into three compartments of 40,000 square feet of storage space each. Cowan maintains an office in the front portion of no. 17. Cowan, who became the Respondent's manager in April 1982, is a statutory supervisor as is Dennis Kunkle, the Respondent's warehouse supervisor. Steven Schwab, one of the key General Counsel witnesses here, was alleged in a prior unfair labor practice case to have been a statutory supervisor responsible for several unfair labor practices, but it appears that his authority as a working foreman was altered and the parties were able to stipulate as to his eligibility to vote in the third election. The no. 17 office area is also the work location for two clerical employees and another individual who is concerned primarily with the Respondent's inventory

[1] Unless shown otherwise, all dates are 1983.

[2] According to the supplemental report, the first election, conducted on March 11, 1982, pursuant to a Stipulation for Certification Upon Consent Election, resulted in an unfavorable vote for representation and was set aside pursuant to the parties' stipulation that certain of the Union's postelection objections had "arguable merit." The tally of ballots for the second election, conducted on June 3, 1982, was not served until November 10, 1982, and it, likewise, reflected an unfavorable result for the Union. However, the second election was also set aside pursuant to the parties' February 17 stipulation that the Union's timely objections had "arguable merit."

[3] It was specifically concluded in the supplemental report that there was a delay in the receipt of the objections which was attributable to the postal service. No claim was made before me that the objections were not timely filed.

and its location. In addition, the Respondent rents warehouse space in no. 13, located directly across from no. 16, and warehouse space in a noncontiguous area known as the Foreign Trade Zone. The Respondent also provides labor for loading and unloading in an area known as the Team Track but there is no storage facility in that area.

At the relevant times, the Respondent employed approximately 11 unit employees who load and unload the cotton bales using mechanized lifts. Generally, the cotton arrives at the Respondent's warehouses by truck or container. Although the unit employees could familiarize themselves with the name of each particular shipper from the accompanying shipping documents, there is no indication that they have reason to be concerned with such information. Instead, they generally concern themselves with a letter mark contained on the cotton bales and the shipping documents. Nevertheless, it is pertinent that, during the 1982–1983 season, approximately 20 percent of the cotton received for storage at no. 16 and no. 17 came from a single shipper named *Calcot*.

C. *Chronology of Relevant Events*[4]

As noted above, the third representation election in Case 21–RC–16932 was scheduled for March 4, following the parties' February 17 stipulation to set aside the second election on the ground that the Union's objections thereto had "arguable merit." All of the events involved here occurred between the beginning of the year and the March 4 election.

In a conversation which reportedly occurred in late January or early February, Schwab expressed dissatisfaction to Cowan because he had not received the same pay raise recently granted to the other employees. Cowan reminded Schwab that he, nevertheless, was earning 50 cents per hour more than the other unit employees. Schwab responded that he had been promised a $1-per-hour differential as the working foreman. Schwab also argued that he had been a "company man," excelling in his job and that he deserved the same 50-cent-per-hour raise. Schwab told Cowan that he "did what the company wanted in going non-union" and that it was not fair for him to be bypassed. Schwab claims that Cowan replied to his appeal by saying that he had "hurt the company with the prior affidavit that [he] gave to the NLRB." Cowan's reference, Schwab believes, was to a June 1982 affidavit prepared in the offices of the Respondent's labor consultant. Schwab said that he also provided a copy of the affidavit to the Respondent's counsel in this proceeding.

Cowan claimed that he was unaware that Schwab had provided an affidavit to the NLRB. He also denied that Schwab was initially bypassed for the pay increase because he had given an affidavit to the NLRB. It is undisputed that Schwab was granted the pay increase soon after this conversation when Cowan confirmed that Schwab had earlier been promised the larger differential.

In February, Schwab went to the office at no. 17 in connection with his work. Cowan, his wife, and the sister of Cowan's wife (identified as the two clericals) were present. Schwab claims that Cowan asked his opinion at this time as to how he thought the representation election would turn out. Schwab told Cowan that he thought that the vote would be about 50-50. Cowan then asked if Schwab knew who was eligible to vote. After Schwab replied affirmatively, the conversation ended. Cowan denied that he had any conversation with Schwab about how the employees would vote. Neither of the clerical employees testified.

About 3 p.m. on March 2, Cowan approached Raul Lazo, a unit employee, near a warehouse ramp. No one else was present. Cowan told Lazo that he was going to need his vote in the March 4 election and that it would be to Lazo's advantage if he voted against the Union. Lazo's only response was "okay" and the conversation ended. The substance of this conversation is essentially undisputed as is another similar conversation between Cowan and Lazo the following day. Neither conversation is alleged as an unfair labor practice but they are probative of the fact that Cowan was openly opposing the Union.

On the morning of March 3, the day before the third election, Cowan met with nearly all of the unit employees in his office. Warehouse Supervisor Kunkle was also present. During the meeting, Cowan told the employees that he felt that he had treated them all fairly and, for that reason, he felt they did not need union representation. Cowan said that if the employees "went union" a majority of the cotton stored with the Respondent would not be there and that work would slow down. Cowan continued telling the employees that he expected additional cotton for storage from Calcot, one of the new accounts that Cowan had secured, but that Paul Couch, a Calcot executive Cowan had known for several years, would not store additional cotton in the Respondent's warehouses if the employees unionized because it would be "disadvantageous" to Calcot. Cowan explained that the Respondent would lose its advantage because its rates would be too high. Mention was also made of the fact that some shippers were concerned over the election results because they feared that they might not be able to gain access to their stored cotton in the event of a strike as had occurred, Cowan claimed, at some other ware-

[4] There are significant conflicts in the testimony concerning the incidents reported in this subsection. Steven Schwab and Raul Lazo, the General Counsel's witnesses, appeared sincere and trustworthy while testifying. By contrast, the testimony of Cowan and Kunkle, the Respondent's witnesses, is laced with occasional conflicts and inconsistencies and certain significant points were elicited by means of leading and highly suggestive questions. In addition, the almost neutral tone of Cowan's remarks at the March 3 employee meeting—discussed below—as portrayed by the direct testimony of Cowan and Kunkle does not comport with other undisputed evidence including Kunkle's own acknowledgment on cross-examination that Cowan's remarks at the meeting included hostile assertions that he did not need outsiders telling him how to run his business. Furthermore, Cowan's denial—noted below—that he was aware that Schwab had given an NLRB affidavit is highly improbable in the total circumstances of this case. Finally, the fact that Lazo, who was still employed by the Respondent at the time of the hearing, testified contrary to Cowan, his supervisor, lends some strength to his reliability. For these reasons, it was concluded that, to the extent there was a conflict in the evidence, the testimony of Schwab and Lazo represented the more reliable version of the events reported here. However, the findings concerning the March 3 meeting is a composite of the undisputed testimony of all four witnesses and the credited testimony of Schwab and Lazo on disputed points.

houses. In addition, Cowan said that the Respondent could not expect to get Commodity Credit Corporation cotton for storage if the employees unionized. Cowan said that if the employees voted against the Union they could expect to receive enough cotton from Calcot to keep them busy during the off season. Cowan invited questions and several followed. One employee, Mark Van Der Kay, asked if Cowan would negotiate an agreement directly with the employees. Cowan replied that it would be possible to "work up a contract with the employees" if they "were to go non-union," but that "his hands were tied" during the election proceedings. Kunkle said that Cowan "left [that question] kind of open." Nevertheless, Cowan told the group that if they voted for representation he would negotiate strictly with the Union and not the employees.

After the meeting, Cowan approached Lazo in one of the warehouses. No one else was present. At this time, Cowan remarked to Lazo that he had heard about a conversation between Lazo and another employee in which Lazo had expressed concern about a wage decrease at a nearby firm in the course of a labor dispute. Cowan told Lazo not to worry. Cowan went on—according to Lazo—to point out that the cotton bales in the particular area of the warehouse "comes from Calcot." Cowan then added that Calcot's cotton would not be there if the employees "went union." Cowan told Lazo that the Respondent was awarded Calcot's account after a labor dispute at the warehouse where Calcot previously stored its cotton had interfered with Calcot's access to its cotton. Although Cowan generally denied that he ever stated to any employees that Calcot would not store its cotton in the Respondent's warehouse if the employees opted for the Union, Cowan did not specifically testify concerning this conversation.

Approximately 2 hours later, Cowan stopped Lazo as he was driving up a warehouse ramp. On this occasion Cowan asked Lazo how he intended to vote. Lazo said that he did not know. Cowan told Lazo that it would be "advantageous" to him to vote against the Union. Cowan also told Lazo that if the Union won most of the cotton would not be there and the work would slow down. Cowan did not specifically testify concerning this conversation but he denied generally asking any employee other than Schwab about their voting plans.[5]

D. *Additional Findings and Conclusions*

In his brief, the General Counsel argues that Cowan's remark about Schwab's affidavit is coercive and that it should be remedied because it would tend to discourage employees from giving testimony under the Act. The General Counsel also asserts that Cowan's inquiry to Schwab about the possible election results and his inquiry to Lazo about his voting intentions are both coercive even in the absence of any accompanying threats or promises as Cowan gave no assurance against any reprisal. The General Counsel feels that Cowan's contemporaneous remark to Lazo that the Respondent would lose the Calcot cotton if the employees voted for the Union—a separate unlawful remark in the General Counsel's view—underscores the coercive nature of Cowan's inquiry concerning Lazo's voting intentions. The General Counsel also argues that Cowan's remarks at the March 3 meeting were unlawful because they were designed to convey the notion that employees would suffer economically if they voted for the Union, namely, the loss of the existing Calcot work, but that they would benefit economically from added Calcot work if they rejected the Union. Finally, the General Counsel believes that Cowan effectively promised to deal directly with the employees in order to induce them to forego representation.

Apart from its credibility arguments seeking the conclusion that the events detailed above did not occur as reported by Schwab and Lazo, the Respondent advances other legal and factual arguments. With respect to the issue concerning Schwab's affidavit, the Respondent contends that "there is absolutely no evidence that Cowan told Schwab that he did not receive a wage increase because of his affidavit." The Respondent also asserts that the evidence is insufficient to warrant the conclusion that the Respondent "promised [to] negotiate a collective bargaining agreement directly with [the employees] in return for their rejection of the Union." Both of these contentions are grounded upon a careful comparison of the complaint language with some of the testimony in the case. The Respondent also asserts that even if it is assumed that the election result and voting intention inquiries occurred as reported by Schwab and Lazo, respectively, the questions were not unlawful because they were not coercive. In this regard, the Respondent argues that Schwab was merely asked for his "opinion" and the Lazo voting interrogation was an "isolated instance" which lacked any coercive quality. As to Cowan's conduct at the March 3 meeting, the Respondent argues that his remarks did not threaten any loss of work if the employees selected the Union or promise more work if they rejected the Union. Instead, the Respondent contends that the uncontested evidence shows that Calcot's work for the season was completed and that, in any event, Calcot's work simply was not of sufficient magnitude to cause employee concern one way or the other.

I find, in agreement with the Respondent, that the evidence does not show that Schwab or other employees did not "receive wage increases that they otherwise would have received because they had given affidavits to the Board . . . ." At most, the credited evidence of Schwab shows only that Cowan verbalized his judgment that Schwab's affidavit had hurt the Respondent's position in the prior unfair labor practice proceeding in which Schwab was alleged to be an agent of the Respondent. Even assuming that there is no impediment to finding an unfair labor practice because of the wide gap between the conduct alleged and the conduct proven, I remain unconvinced that the disputed remark, viewed objectively, would have the tendency to interfere with, restrain, or coerce employees. Although it may be true that a similar remark, properly pled, could, in another setting, warrant a different conclusion, the total circumstances here fail to demonstrate that Cowan's statement

[5] Interestingly, Schwab said that neither Cowan nor any other supervisor asked him how he planned to vote and he never overheard any supervisor ask any other employee about voting.

was designed to frighten Schwab. Rather, the evidence shows that the disputed remark was the product of Schwab's argument that he was deserving of a pay increase, in part, because of his loyal antiunion conduct and attitudes. To the extent that Cowan's remark about the affidavit might have had any coercive effect, I find that it was quickly overcome when Cowan agreed to verify the pay differential commitment made to Schwab, and the further fact that Schwab actually received the increase shortly thereafter. Accordingly, it is concluded that Cowan did not violate Section 8(a)(1) in an manner by his remark to Schwab about his affidavit.

Similarly, Cowan's question to Schwab about the election results is not coercive. Even assuming that Schwab may become sympathetic toward the Union, it is difficult to perceive how the election result question conveyed any displeasure on Cowan's part with Schwab's activities or how it discouraged him or any other employee from engaging in union activity. Compare *PPG Industries*, 251 NLRB 1146 (1980). Accordingly, it is concluded that Cowan's election result inquiry to Schwab did not violate the Act.

The General Counsel has met the required burden of proving the remaining allegations. Cowan's claim at the March 3 employee meeting that most of the cotton stored in the Respondent's warehouses would not be there if the employees "went union" was not grounded on any objective appraisal made known to the employees. Rather, it is clear from the credited evidence that Cowan was speculating about how Couch from Calcot would react to storing cotton in a unionized warehouse on the basis of nothing more than their long acquaintanceship and even further conjecture about the Respondent's own rate structure in the event of unionization. The contrast pictured by Cowan to the effect that employees would have off season work if they voted against the Union serves to emphasize the conclusion I have made that Cowan's remarks at the March 3 meeting were specifically designed to intimidate the employees. A similar contrast is seen in his further remarks that he could "work up a contract" if the employees rejected the Union but that he would negotiate strictly with the Union if the employees voted the other way. In both instances, the message from Cowan's remarks is unmistakable—selecting the Union would mean less work and a much more difficult negotiating posture; rejecting the Union would mean more work and a much easier negotiating posture. The Respondent's claim that it had already received all of the work from Calcot it was going to receive during the 1982–1983 season is probative only of the credibility issues raised by the conflicting testimony. Clearly, this fact, if true, does not prove that Cowan did not use the carrot and stick argument grounded on Calcot's work in the course of the March 3 meeting. The Respondent's claim that the employees "knew" the Calcot work was no longer coming in because the trucks which hauled Calcot's cotton had not been evident recently is indicative of limp nature of this entire argument.

Cowan's remarks at the March 3 meeting do not fall within the protection of Section 8(c) of the Act because they cannot be legally characterized as "carefully phrased" predictions based on objective facts designed to convey the Respondent's belief "as to demonstrably probable consequences beyond the [the Respondent's] control . . . ." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 618 (1969). It is concluded that Cowan's remarks at the March 3 meeting were impermissible threats and promises which violated Section 8(a)(1) of the Act.

In addition, Cowan's remark to Lazo shortly following the meeting to the effect that Calcot's cotton would not be stored at the Respondent's warehouse is merely a continuation of the same unlawful theme he played 2 hours earlier in the meeting with all of the employees. Accordingly, it is concluded that Cowan's remark to Lazo individually was also a threat of adverse consequences if the employees "went union" and violated Section 8(a)(1) of the Act.

I also reject the Respondent's claim that Cowan's inquiry as to which way Lazo intended to vote should be overlooked as an isolated incident. Factually, that claim itself is unsupportable where, as here, it occurred on the same day that Cowan made the other unlawful threats and promises found above. However, entirely aside from the fact that it was not an isolated instance of coercive conduct, I am not satisfied that such an employer's inquiry as to how an employee intends to vote in a secret-ballot representation election should ever be excused on that ground. Moreover, it is impossible to perceive of any justification for such an inquiry especially on the day before a scheduled election designed to resolve a question concerning representation. I conclude, therefore, that Cowan's interrogation of Lazo concerning his voting intention was coercive and that it violated Section 8(a)(1) of the Act.

With respect to the alleged objections to the March 4 election, it is the Board's usual policy that serious unfair labor practices during the critical period prior to the election are, a fortiori, grounds for setting aside election results if timely objections are filed. All of the unfair labor practices found herein occurred on the day before the third election in connection with the employer's election campaign. In these circumstances, it is fair to conclude that the Respondent sought to maximize the effect of its unlawful conduct on the election outcome, and it is reasonable to infer that the election result was tainted by the Respondent's unlawful conduct. Accordingly, the Union's objections to the result of the third election are sustained. It is recommended that the third election be set aside and that a new election be conducted at a time deemed appropriate by the Regional Director. It is further recommended in this connection that the Regional Director include in the notice of election to be issued the following paragraph consistent with the Board's decisions in *Lufkin Rule Co.*, 147 NLRB 341 (1964); *Bush Hog, Inc.*, 161 NLRB 1575 (1966):

Notice to All Voters

> The election conducted on March 4, 1983, was set aside because the National Labor Relations Board found that certain conduct of the Employer interfered with employees' exercise of a free and reasoned choice. Therefore, a new election will be

held in accordance with the terms of this notice of election. All eligible voters should understand that the National Labor Relations Act, as amended, gives them the right to cast their ballots as they see fit, and protects them in the exercise of this right, free from interference by any of the parties.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The unfair labor practices of the Respondent found to exist in section III above, occurring in connection with the Respondent's operations described in section I above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having concluded that the Respondent has violated the Act in the manner specified above, it is recommended that the Respondent be required to cease and desist therefrom and to post the notice to employees in order to apprise employees of their rights and to effectuate the purposes of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(2) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By coercively interrogating an employee, threatening employees with adverse consequences if they voted for the Union, and promising employees benefits in the form of added work and a written agreement, the Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act, and engaged in conduct which affected the results of the March 4, 1983 representation election.

4. The Respondent did not violate the Act in any other manner.

5. The unfair labor practices found herein affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on entire record, I issue the following recommended[6]

ORDER

The Respondent, TVA Terminals, Inc., Wilmington, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating its employees concerning their activities or sympathies for International Longshoremen's and Warehousemen's Union.

(b) Threatening employees with adverse economic consequences or conduct evidencing an unwillingness to reach a collective-bargaining agreement if the employees select International Longshoremen's and Warehousemen's Union to represent them.

(c) Promising employees that they will receive additional work or that it will prepare a written contract as a substitute for a collective-bargaining agreement if they reject International Longshoremen's and Warehousemen's Union as their representative in a representation election conducted under the Act.

(d) In any other like manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Post at all of its locations in the Wilmington, California area copies of the attached notice marked "Appendix."[7] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director of Region 21 within 20 days from the date of this Order what steps the Respondent has taken to comply with its terms.

IT IS FURTHER ORDERED that the election conducted on March 4, 1983, in Case 21-RC-16932, be set aside and that said case be remanded to the Regional Director for Region 21 for the purpose of conducting a new election at such time as he deems the circumstances permit the free choice of a collective-bargaining representative.

IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed insofar as it alleges other unfair labor practices not specifically found herein.

---

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[7] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."